

REDACTED – FOR INCLUSION IN THE PUBLIC DOCKET

31 October 2001

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: BellSouth Georgia/Louisiana, CC Docket No. 01-277

Submitted Electronically

Dear Ms. Salas:

On October 25, 2001, BellSouth Corporation (BellSouth) filed an *ex parte* letter in this docket¹ advising the Commission that the BOC had “adjusted” its OSS flow-through results because its prior reported data “had the unintended impact of mischaracterizing” the flow-through results.² In that letter, BellSouth also reported that it made other adjustments to its flow-through metrics, based on, for example, its erroneous inclusion of “dummy FOCs.” Dummy FOCs do not actually result in a service order, because the CLEC is canceling, not placing, an order: nonetheless, BellSouth counted “dummy FOCs” in its flow-through calculations.³ All of these errors and corrections support Covad’s prior contention that the Commission cannot, and should not, have any faith in the validity of BellSouth’s claims of compliance with the section 271 OSS checklist requirements.

Most importantly, BellSouth admits in its October 25 *ex parte* that it “does not yet include xDSL LSRs in the flow-through report.”⁴ BellSouth attempts to downplay the significance of this admission, stating that there is a “relatively low volume of xDSL LSRs submitted by the CLECs” and thus “the inclusion of these transactions will have minimal impact on UNE Flow-Through transactions.”⁵ In essence, BellSouth contends that because xDSL loop orders are low compared with overall order volume, the Commission should disregard BellSouth’s failure to report on xDSL loop performance and instead focus on its aggregate performance across all UNE types. The Commission

¹ See Letter dated October 25, 2001, for Jon Banks, General Attorney, BellSouth Corp., to Magalie Roman Salas, Secretary, FCC (CC Docket No. 01-277).

² *Id.* at 3.

³ *Id.* at 6.

⁴ *Id.* at 8. This admission echoes the findings of KPMG exception 113, opened in Florida on October 4, 2001. Specifically, KPMG stated: “KPMG Consulting has found that BellSouth does not capture xDSL transactions, which are processed through Corporate Order Gateway (COG), for the “Ordering: Percent Flow-Through Service Requests (Summary)” and “Ordering: Percent Flow-Through Service Requests (Detail)” Service Quality Measurements (SQMs).”

⁵ *Id.*

has not seen this argument since the Bell Atlantic – New York long distance application, and with good reason. The Commission specifically instructed BOCs not to try to make it again.⁶

Despite BellSouth's efforts to minimize the issue, the competitive significance for Covad cannot be overstated. Covad argues in this proceeding that BellSouth's OSS is dysfunctional and does not provide flow-through capabilities. As noted by KPMG in Florida OSS test exception 113, and as admitted by BellSouth (thanks to the Department of Justice) in this proceeding, BellSouth's OSS performance metrics do not include xDSL loop orders. Thus, the Commission has been denied evidence that would support Covad's claims of low flow-through percentage. Although BellSouth now claims it will "manually include xDSL LSRs" in new, revised data it will soon submit to the Commission, that data will be an unverified, eleventh hour submission that cannot be given any weight.

KPMG effectively summarized the competitive significance of this instability in BellSouth's metrics:

CLECs rely on BellSouth's performance measurements to assess the quality of service provided by BellSouth and to plan future business activities. If BellSouth does not capture all relevant data, BellSouth's SQM reports for the "Ordering: Percent Flow-Through Service Requests (Summary)" and "Ordering: Percent Flow-Through Service Requests (Detail)" SQMs may be incomplete. Without complete and accurate SQMs, CLECs might not be able to assess the quality of service received or plan for future business activities reliably."⁷

The same obviously holds true for the Commission, which cannot have any confidence in the reliability of BellSouth's OSS metrics, particularly with regard to flow-through.

BellSouth's performance data as submitted provides a window on the significance of this issue. For example, BellSouth's September 2001 performance data reports ***** flow-through LSRs submitted by Covad throughout the BellSouth footprint. At the same time, the performance data shows that only ***** of those ***** orders were submitted via LENS. How is that possible? Covad does not submit electronic orders via any means other than LENS. Where did the other ***** orders come from? Is BellSouth counting faxed orders, or other non-flow through eligible orders, in its flow-through metrics? It is impossible to tell. In addition, because the ***** orders exclude all of Covad's stand-

⁶ See *Bell Atlantic New York Section 271 Order* at ¶ 330 ("We choose to look at Bell Atlantic's overall performance due to the unique circumstances present in this application. Given our expectation that the unique circumstances present in this case will evolve over time or will otherwise not be present in future applications, we do not expect to rely solely on a BOC's overall loop performance in reaching a decision on this checklist item in future applications. Rather, we will find it most persuasive if future applicants under section 271, unlike this applicant, make a separate and comprehensive evidentiary showing with respect to the provision of xDSL-capable loops . . .").

⁷ Exception 113, BellSouth Florida OSS Testing Evaluation, October 4, 2001.

alone xDSL loops⁸, the vast majority of Covad's orders are excluded from BellSouth's metrics. It is difficult to see how the Commission can properly evaluate BellSouth's OSS performance.

The Commission should also be aware that KPMG has recently opened several new exceptions related to BellSouth's OSS performance. As Covad argued in its initial comments, the Florida test provides the only viable insight into BellSouth's OSS performance, because it is the only test conducted under the auspices of the state commission and in a true independent "third party" manner. For example, in exception 86, KPMG reported that it "did not receive flow through Firm Order Confirmations (FOC) on Local Service Requests (LSR) submitted electronically via the mechanized ordering process." That exception remains open, as does exception 100: "KPMG Consulting has not received timely mechanized Unbundled Network Elements – Loop (UNE-L) Firm Order Confirmations (FOCs) from BellSouth's Electronic Data Interchange (EDI) interface. This exception was originally issued as Observation 101."

In sum, BellSouth's OSS remains a barrier to effective competition, for the reasons already set out in Covad's comments in this docket. Recent findings by KPMG in Florida, and recent admissions by BellSouth in this docket, call into question the representations made by BellSouth regarding its OSS. The Commission cannot overlook the findings of KPMG in Florida, given the region-wide uniformity of BellSouth's OSS, and it cannot ignore the clear gaps in performance data presented by BellSouth in support of its Georgia/Louisiana applications.

Removal of loops from LFACS.

In the *Local Competition Third Report and Order*, the Commission concluded that incumbent LECs must provide unused copper transmission facilities as an unbundled network element, to the extent such facilities exist.⁹ Thus, although the Commission took note of SBC's merger condition commitment to provide competitors with access to "home-run" copper even after remote terminal upgrades, the Commission concluded, "SBC has an obligation to provide access to its unused copper plant, irrespective of the Merger Conditions."¹⁰

In *ex parte* filed October 26, 2001,¹¹ BellSouth responds to a complaint from Covad that BellSouth is refusing to make home-run copper loops available to CLECs

⁸ It appears that BellSouth has only counted Covad's linesharing orders in its flowthrough metrics, although that is impossible to verify.

⁹ See *Local Competition Third Report and Order* at ¶ 174.

¹⁰ *Project Pronto Order*, ¶ 38 n.110.

¹¹ Letter dated Oct. 26, 2001, from Kathie Levitz, Vice President – Federal Regulatory, BellSouth, to Magalie Roman Salas, Secretary, FCC (CC Docket No. 01-277), attaching Letter dated October 26, 2001, from Lynn Holmes, Vice President, Regulatory and External Affairs, BellSouth, to David Burgess, Commissioner, Georgia PSC (BellSouth Holmes Letter). BellSouth filed this *ex parte* notification together with an attached letter from Covad to Commissioner Burgess of the Georgia Commission. That attached letter contained confidential and proprietary information that BellSouth filed in the public docket. On October 31, Covad notified BellSouth and the Commission of this transgression.

after BellSouth upgrades remote terminals to offer DSL capability. Specifically, Covad alleged to the Georgia Commission that BellSouth removes home-run copper loops from LFACS as it upgrades its loop plant to copper/fiber loops and refuses to provide available copper loops to requesting carriers. The effect is simple: BellSouth can provide DSL retail service to customers served over copper/fiber loops, but Covad cannot access the home run copper – even copper that is sitting unused in the ground – because BellSouth refuses to make those loops available.¹²

A second issue related to LFACS has recently appeared in the Florida OSS test. KPMG recently opened exception 117, which remains open, and observed the following:

KPMG Consulting has observed that BellSouth.net has access to greater information from a loop qualification report than that of a DLEC/CLEC requesting a loop qualification for the same telephone number.

As with the numerous other OSS exceptions opened by KPMG in Florida, this observation provides further evidence that BellSouth fails to provide nondiscriminatory access to its OSS. This exception reveals particularly disturbing evidence of discrimination in favor of BellSouth's retail DSL arm, to the competitive detriment of Covad. The Commission should investigate further.

Respectfully submitted,

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¹² See BellSouth Holmes letter at 4.